

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, June 22, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Dick Esseks, Gerry Krieser, Roger Larson, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor. Marvin Krout, Ray Hill, Mike DeKalb, Tom Cajka, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and introduced and welcomed new Commission member Dick Esseks.

Bills-Strand then requested a motion approving the minutes for the regular meeting held June 8, 2005. Motion for approval made by Carroll, seconded by Carlson and carried 7-0: Carlson, Carroll, Krieser, Larson, Pearson, Sunderman and Taylor voting 'yes'; Esseks and Bills-Strand abstaining.

CONSENT AGENDA **PUBLIC HEARING & ADMINISTRATIVE ACTION** **BEFORE PLANNING COMMISSION:**

June 22, 2005

Members present: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **PRE-EXISTING SPECIAL PERMIT NO. 31A; PRE-EXISTING SPECIAL PERMIT NO. 32A; SPECIAL PERMIT NO. 05027; SPECIAL PERMIT NO. 05028; SPECIAL PERMIT NO. 05029; SPECIAL PERMIT NO. 05030; and COMPREHENSIVE PLAN CONFORMANCE NO. 05001.**

Item No. 1.3, Special Permit No. 05027, and Item No. 1.6, Special Permit No. 05030, were removed from the Consent Agenda and scheduled for separate public hearing.

Ex Parte Communications: None.

Carlson moved to approve the remaining Consent Agenda, seconded by Carroll and carried 8-0: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Bills-Strand and Sunderman voting 'yes'; Taylor dissenting.

Note: This is final action on Pre-Existing Special Permit No. 31A, Pre-Existing Special Permit No. 32A, Special Permit No. 05028 and Special Permit No. 05029, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

SPECIAL PERMIT NO. 05027
TO ALLOW AN ACCESSORY BUILDING
FOR HOUSING A DOMESTIC EMPLOYEE
ON PROPERTY GENERALLY LOCATED
AT S. 56TH STREET AND ROKEBY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to two letters in opposition.

The applicant was not present.

There was no testimony in support or opposition.

ACTION BY PLANNING COMMISSION:

June 22, 2005

Larson moved approval, seconded by Carlson.

Larson believes that if those who sent the letters of concern felt very strongly about it they would be here today. He sees no reason to deny it.

Carlson noted that the layout does not appear to be tremendously out of scale. They have eight acres and they're just building a barn with a unit for a caretaker on top.

Motion for conditional approval carried 9-0: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

SPECIAL PERMIT NO. 05030
FOR THE STORAGE AND SALE OF
AGRICULTURAL CHEMICALS,
ON PROPERTY LOCATED AT
N. 56TH STREET AND FLETCHER AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing due to a letter in opposition from the attorney representing Metz Baking Company.

Mike DeKalb of Planning staff submitted the letter from John Hoffman on behalf of Metz Baking Company, the owner of the parcel adjacent to the south. Metz is in the business of baked foods and baked food product distribution and has some concern about the storage and sale of the chemicals, i.e. what types of fertilizer; if it is repackaged; what will happen if there are any releases, etc. Metz is also requesting a condition to follow and comply with EPA and NDEQ requirements and to install and maintain adequate sprinkler systems.

Proponents

1. Mark Hunzeker appeared on behalf of **David Benes**, the applicant. This is a business which will be selling agricultural chemicals, herbicides and pesticides. They are not in the business of storing or selling fertilizer. Many of these same chemicals are used, stored and sold at a variety of different businesses from WalMart to Orschelns to your neighborhood grocery store. There will be no custom application or aerial application. Everything that is brought to and sold from this site will be delivered and sold in the same sealed containers in which it arrives—no repackaging, no re-mixing and no bulk storage, as defined by EPA and NDEQ regulations. The largest containers can hold 275 gallons. The industry standard for filling those containers is to fill to a level of 250 gallons. There is not a requirement under the current regulations to provide containment because of the lack of large quantity bulk storage; however, Mr. Benes does intend to build a dock onto this building. Doing that will require grading down to enable the truck to get down to dock height, and, therefore, there will be a well

area in the bottom of the ramp, which will require having to have a sump pump in the event of heavy rain fall. That area will be more than adequate to contain a spill of any one of those containers.

Hunzeker further stated that the buildings will be locked when not occupied. About 90% of the business of this enterprise will be done during the six weeks between April and the middle of May. If successful, particularly in this first few years, Mr. Benes anticipates one semi-truck load a week, with probably two to three pickup loads being picked up per day.

Hunzeker agreed to all conditions of approval, including compliance with all federal, state and local regulations. This applicant has a tremendous amount of experience in this business having worked in a family business of the same type for more than 40 years and never having had a serious problem. This location in an industrial district is very good for this business.

Hunzeker then submitted the letter he sent to Mr. Hoffman in response to the letter in opposition. The loading area and all of the window openings in the Metz building are on the opposite side of the building from where the loading facility in this special permit will be located. Mr. Benes is not interested in having lots of fertilizer storage and he assured that they are not in the fertilizer business.

Hunzeker submitted proposed amendments to the conditions of approval to satisfy the concerns raised in the letter in opposition:

1. This approval permits the sale and storage of agricultural pesticides and herbicide chemicals.
- 2.5 There shall be no repackaging or re-mixing of any chemicals on-site.
- 2.6 There shall be no outdoor storage of any chemicals.

Hunzeker visited with Mr. Hoffman about these proposed amendments, who thought his client would be amenable to these conditions.

Hunzeker advised that he also received a phone call from Bob Milligan of MI Industries, which is also located near this location, and their concerns were very similar. When Hunzeker described the operation and the conditions to Mr. Milligan, Hunzeker believes he was satisfied.

It was confirmed that the products are purchased by farmers in the area.

Carroll inquired whether there would be any possibility of expansion. Hunzeker stated that there is not much room for expansion, but this business will not necessarily occupy that entire

building initially. There are currently two tenants in the building, each occupying 5,000 sq. ft. Benes is going to use the 8,000 sq. ft. frontage.

Pearson inquired as to the nature of the leases. Benes advised that Sampson Construction owns the building with long term leases for the two existing tenants -- one is a glass company and the other is a boat repair business. Benes has agreement to purchase the building if this permit is approved.

Benes believes he will be able to serve 100 to 150 farm operations to begin with.

Hunzeker also pointed out that the pesticides are brought in in much smaller containers than the herbicides, so any kind of a spill of a pesticide would be very small.

There was no testimony in opposition.

Staff questions

With regard to Condition #2.1 (All buildings shall meet Building, Fire and Life Safety Codes), Carroll inquired whether Benes will be required to complete the sprinkler system for the whole building. Mike DeKalb advised that this condition is required only for the tenant conducting the operation under this special permit.

Carlson noted that the secondary containment recommended by the Health Department is not a condition of approval. DeKalb explained that without additional information, the Health Department did not believe they had legal authority to require it, but are recommending it for lack of information. Currently, containment will not be required.

Response by the Applicant

Hunzeker reiterated that because of the small size of the containers, the likelihood of a spill that goes outside the walls of the building is very small. In this case, the containers are small enough that secondary containment is not required; however, they will have it in the loading dock area.

Pearson wondered about a spill inside that might go down the sewer. Benes explained that a spill inside the building would have to be absorbed with an absorbent and such a spill is required to be recorded. As far as getting rid of the spill, it can be legally spread out on a field somewhere as long as the rules of the product are followed.

Benes confirmed that the products will not be opened. Esseks wondered whether there is any danger that the trucks will not secure the barrels appropriately. Benes responded, suggesting that the gasoline trucks we meet on the highway on a daily basis are much more dangerous.

He agreed that there is always a danger, but there is a need to have agriculture to provide the food we eat.

DeKalb agreed with the proposed amendments submitted by Hunzeker.

ACTION BY PLANNING COMMISSION:

June 22, 2005

Carlson moved to approve the staff recommendation of conditional approval, with amendments as submitted by the applicant, seconded by Carroll and carried 8-1: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Esseks and Bills-Strand voting 'yes'; Pearson voting 'no'. This is final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 05043
FROM R-4 RESIDENTIAL DISTRICT
TO R-T RESIDENTIAL TRANSITION DISTRICT

and

USE PERMIT NO. 05005
FOR A 5,000 SQ. FT. OFFICE/MEDICAL BUILDING
ON PROPERTY GENERALLY LOCATED
AT SOUTH 37TH STREET AND "O" STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. **Brian Carstens** appeared on behalf of the applicants, Gregg and Cindy Trautman, who recently purchased the property (office building and two houses south of the alley) at 37th & O Streets in December of 2004. There is a special permit for the existing parking lot dating back to the 1970's. The applicants met with the Witherbee Neighborhood Association in April and May. In response to the neighborhood, the applicant has provided more parking in the parking lot to eliminate or reduce the possibility of parking on the street. The neighborhood association was also concerned about screening and lighting, and the applicant has addressed those concerns as well. The applicant also found that it would not be economical to rehab the houses. It is anticipated that the R-T building would attract a dentist or medical office to bring service to the neighborhood.

Carstens submitted a motion to amend requested by the neighborhood to add a note stating that early childhood care facilities would be prohibited.

2. Fred Freytag, President of **Witherbee Neighborhood Association**, submitted a letter in support, as long as there is no child care facility. The Witherbee neighborhood is a mixture of residential homes with different levels of rent and home ownership. The two homes purchased by the applicant are really in need of some repair and the neighbors believe that what could be built there if the houses are removed would be much larger and much more disruptive to the neighborhood. The neighborhood believes that the office building would make a nice transition. The O Street traffic has gotten louder.

Freytag noted that the staff report refers to the loss of homes; however, he suggested that there have been a number of churches buying up entire blocks and making parking lots out of them. This proposal is something that will bring jobs into a neighborhood and it provides an extra buffer from "O" Street.

There was no testimony in opposition.

Staff questions

Carlson asked staff to discuss the traffic generation from the medical use as he believes that medical office use typically generates quite a few trips. Tom Cajka of Planning staff stated that the traffic counts are averaged, based on the land use. As stated in the staff report, the medical office average is 181 trips per day as compared to 23 trips per day for duplexes or 55 trips per day for general office. Medical/office increases traffic and requires additional parking spaces. Staff believes that a lot of the traffic that would want to go west on O Street would funnel back through the neighborhood over to 33rd Street.

Response by the Applicant

Carstens stated that the applicant did some informal research based on the County Assessor web page as to the size of the 50 nearest homes – 35% were 1,000 sq. ft. and less and 65% were larger than 1,000 sq. ft. The staff report makes it sound like everything in the neighborhood was the lesser square footage.

Carstens submitted a revised site plan showing an indentation in the front elevation of the building on the 37th Street side making it look like two buildings from the street. He also pointed out that the existing parking lot special permit had no setbacks to the neighborhood to the west and this proposal provides the 20' requirement in R-5 zoning.

Carroll inquired whether they would be sharing parking with the office building to the north. Carstens stated that three stalls are required to be shown for the office building to the north.

As far as traffic concerns, Carstens noted that during the day a lot of people do turn left and get out onto O Street, but the applicant does not believe it is going to be a concern and it was not a concern to the Witherbee Neighborhood Association.

CHANGE OF ZONE NO. 05043

ACTION BY PLANNING COMMISSION:

June 22, 2005

Pearson moved denial, seconded by Carlson.

Pearson referred to the staff report analysis and believes that moving a medical office building into a narrower street off of a neighborhood is serious business, particularly when we know that medical office buildings have a fairly high trip count. Her office is not far from this location and she can attest that O Street is very busy a great deal of the time, so she can't imagine people going south to M to go to 33rd. She believes it is too close to the residential area.

Carlson commented that he appreciates the staff's position on this and the references to the Comprehensive Plan to support the recommendation of denial. However, the neighborhood association and the surrounding neighbors have been contacted and involved. In principle, he agrees with the staff, but in hearing the testimony in this situation, he believes they may have found a solution that might work here.

Pearson noted that the developer said they could construct multi-family housing, but in reality they could only put in two duplexes. The neighborhood may be afraid of a larger residential use and higher density, but she does not believe that is the case.

Esseks commented that he is interested in the preservation of older neighborhoods and this looks like an example of representation of the neighborhood. It seems to be a plausible type of protection in terms of a buffer. There are no property owners speaking against it and with the neighborhood association support, he is inclined to support this innovative way of dealing with possible neighborhood blight.

Carroll commented that he believes the staff has done a good job of pointing out the reasons for denial, but he agrees that this is a special situation that just works better for the neighborhood in this one area. Making the building look like it belongs in the neighborhood is important and that is why he would be in favor.

Motion to deny failed 1-8: Pearson voting 'yes'; Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Esseks and Bills-Strand voting 'no'.

Taylor moved approval, seconded by Carroll and carried 8-1: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Esseks and Bills-Strand voting 'yes'; Pearson voting 'no'. This is a recommendation to the City Council.

USE PERMIT NO. 05005

ACTION BY PLANNING COMMISSION:

June 22, 2005

Taylor made a motion for approval, with conditions, with the amendment and revised site plan submitted by the applicant, seconded by Carroll.

Pearson finds it interesting that they want a medical office building but no children.

Motion for conditional approval, with amendments, carried 8-1: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Esseks and Bills-Strand voting 'yes'; Pearson voting 'no'. This is final action unless appealed to the City Council within 14 days.

USE PERMIT NO. 05006

FOR 130 TOWNHOME UNITS AND

ASSOCIATED WAIVER REQUESTS,

ON PROPERTY GENERALLY LOCATED

AT S. 40TH STREET AND GRAINGER PARKWAY.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: Larson disclosed that he visited with some residents in the area.

Ray Hill of Planning staff submitted proposed amendment to add a condition of approval to require compliance with the revisions of Public Works and Utilities.

Hill also submitted two letters in support and one additional letter in opposition.

Proponents

1. DaNay Kalkowski appeared on behalf of **Ridge Development Company and Southview, Inc.**, along with Mark Palmer of Olsson Associates, the engineer, and Jeff Johnson, representative from Craig Bauer Homes. This proposal involves 15 acres of O-3 zoned property located at the northwest corner of South 40th and Grainger Parkway. The application is a use permit for 130 townhome units. This property was zoned O-3 in 1999 as part of the annexation and zoning of the Pine Lake Heights South development, located north of Yankee Hill Road and included area between 27th and 40th Streets. Townhomes are a permitted use in the O-3 zoning district, but do require a use permit.

The applicant has met with Planning and Public Works and it was indicated that the staff would require a connection in the this development to South 38th Street, which is currently constructed to the north boundary line of the property. This connection has been added. Kalkowski advised that the applicant did meet with the neighbors and revised the site plan to increase the rear yard setback adjacent to the residential to 40 feet, which meets the O-3 requirements. In addition, the screening between this development and the neighbors is shown as a landscape screen. They have also shown a road connection to South 40th Street.

Kalkowski submitted proposed amendments to the conditions of approval:

- 1.1.1 ~~Rotate Shift~~ Lots 28-33 ~~so they to front onto Fitzpatrick Lane and relocate to provide a 40' setback from the residential lots to the north and show how the 12 parking spaces will be replaced.~~
- 1.1.3 The recreation area more centrally located or provide an additional recreation area at the southeast portion of the site. The recreation facilities to be provided to the satisfaction of the Parks and Recreation Department and shall be increased in size to be double the amount of recreation space required.
- 1.1.4 Relocate the sidewalks along east side of South 38th and the west side of South 39th Streets to provide an 8' setback from back of curb, and along both sides of the South 38th Street connection at the north boundary of the development. ~~Show sidewalks in South 38th Street aligning with existing sidewalks in Pine Lake Heights 15th Addition. Show continuous sidewalks extending around parking areas.~~

The amendment to Condition #1.1.1 allows the developer to shift the buildings to the south to provide the 40' setback as opposed to rotating them.

Kalkowski believes that the staff agrees with the proposed amendments. The connection to 40th Street has been deleted at the request of Public Works (Condition #1.1.2).

Kalkowski pointed out that none of the waivers affect the setback adjacent to the residential. They all deal with the internal part of the development. If the applicant changed the plan and included the green area without their specific lots, the proposal would meet the minimum lot requirements and residential setbacks. The waivers are not an attempt to increase the density, but a mechanism of how they laid out the development.

Kalkowski noted that some of the letters in opposition allege that this is a really dense development and will cause traffic problems. Kalkowski submitted that this is not true. This proposal shows 130 units on 15 acres, which is 8.7 units/acre. If they were proposing a community unit plan in R-3 zoning, they would be allowed to do at least 7 units per acre; in O-3 zoning, they would be allowed over 14 units per acre.

With regard to the assertion that the townhomes create more traffic than the office park, Kalkowski believes the staff report addresses this issue. The townhome development will generate only about 20% of the daily trips that the office park would generate.

2. Jeff Johnson, real estate agent **representing Craig Bauer**, attested that Craig Bauer has been building in the Lincoln area for 30 years – single family homes, apartment complexes and townhome projects. The 40th and Yankee Hill Road project will be a mixture of 2, 3, 4 and 5 building units. Each of the individual units will be a minimum of 1600 sq. ft. They will all have attached two-stall garages and the price is anticipated to be somewhere in the upper \$130,000's or lower \$140,000's. Johnson submitted a rendering of a four-plex at The Villas at Lakeside, which represents the same footprint that will be used in this proposed project. He discussed the architecture and materials to be used in the construction and discussed the landscaping, covered porches at different elevations, etc. He stated that the Pine Lake South covenants require that all of the material be earth tones; that the front elevation shall have no exposed foundation; and the roofing materials are to be Horizon shingle or better. Johnson stated that the proposed townhomes will meet or exceed all of the covenant requirements. The proposed townhomes will also meet the square footage requirements provided by the covenants for the neighborhood.

Kalkowski reiterated that the developer has been responsive to the neighbors and has made changes where possible. The city is requiring the connection to S. 38th Street, which Kalkowski agrees makes good planning sense, so there will be some traffic that utilizes S. 38th Street, but the traffic will be significantly less than if this were built as an office park. Sunderman inquired about the grade separation between this development and the development to the north. Mark Palmer of Olsson Associates responded, stating that there is a 20' drop in that area today. When this area was mass graded a couple of years ago, this area was lowered to flatten the site to make it marketable for office buildings. The city is building Yankee Hill Road and there is excess material so this development is receiving material from the city. They will meet the standards.

3. Scott Graham, 7935 S. 36th Street, testified in support. He would rather see this kind of residential development than office because of the traffic numbers being significantly higher with the office use. They are proposing to put grass areas along the outside perimeter. The development to the south of Grainger Parkway has no grass facing his development. It is all driveway and rock. The units to the south are not built to the neighborhood standards, to which this developer has agreed.

Opposition

1. Vicki Hopkins, 3801 Diablo Drive, testified in opposition, and about 15 neighbors stood in opposition. Ms. Hopkins submitted a petition bearing 224 signatures in opposition. She agreed with the Planning staff requirement to turn the units sideways. Her back yard would

go into one of those side yards. She would like to see back yards all the way across as opposed to moving the units further down.

Hopkins believes that there is potentially a fatal flaw in the staff assessment of the traffic impact. The problem is that the staff report leads one to believe that those utilizing the office park or townhouses would use the same roadways. Hopkins urged that that is not the case in this plan. The office traffic would use 40th and Grainger. Residents of the proposed units would be familiar with the neighborhood and would go through the neighborhood. At a minimum, one-half of those residents will utilize the 40th Street connection. City traffic indicated seven trips per day per townhouse unit, which equals 900 trips per day. One-half of those folks going north results in an additional 455 cars going down Diablo and the adjoining streets.

Hopkins further pointed out that Cavett Elementary is located at 36th and Diablo and is currently at capacity with over 700 students. Cavett's traffic plan has been approved by the Lincoln Police Department, City Traffic and the LPS Safety Consultant with cars going specifically down Diablo Drive, through 39th, San Mateo and out 40th Street. Diablo is not a widened street. If cars are parked on one side or the other the oncoming car must wait. 38th Street runs into a T-intersection at Diablo, causing a major traffic problem. The 455 cars would be running directly into the school traffic. There is a terrible crest on 40th Street just south of San Mateo. There is no light currently at 40th and San Mateo and there is not one planned. Traffic will be backed up trying to get out on 40th Street. It is her position that this is a very dangerous situation and the townhouses should not be located here. While it may be permitted, it is not appropriate given compromised safety on the existing residences and families.

2. Russ Wren, 3729 Diablo Drive, testified in opposition. 38th & Diablo is currently a dead-end but will be made a through street with this plan. He is concerned about 38th Street becoming an exit from this development. 38th Street and other neighborhood streets will become heavily traveled streets to access businesses and services located in the 27th and Pine Lake Road area. Adding more traffic to this situation is not a good idea. Diablo turns into an exit street for Cavett Elementary. Adding traffic from 38th Street will add to the congestion as well as cause potential harm to the children.

Wren also believes that the density of the proposed development is excessive and does not conform to the surrounding neighborhood. There is little space for grass and trees. He does not believe there is adequate parking. He would hope there would be a uniform 40' setback for all the units. If this project is allowed to move forward, he is hopeful that it will adhere to the same landscaping as the surrounding neighborhoods.

3. David Babcock, 3901 Diablo Circle, immediately north of the proposed development area, testified in opposition and agreed with the previous speakers in opposition. The impact

on traffic, school and safety issues are very important. It compromises the quality of life in Lincoln. The proposal seeks a variance to reduce the size of the lots. This is nearly a 30% reduction in the size of the lots. He is not against the concept of residential dwellings, but the problem is this specific proposal. He is opposed to packing dwellings together which later invites inner city decay and a host of social problems. The reduction of lot sizes conflicts with the lot sizes in the surrounding neighborhood. The houses are only 28' wide. Even 15' around this area with some trees to create a barrier between the surrounding neighborhoods would be a tremendous benefit. This appears to be a proposal of "row houses" – 105 of the 130 units are in five-plexes, creating a very institutional or apartment like atmosphere. It is merely the numbers of this plan that is the real problem.

Babcock also noted that the grade difference is 20' and there was talk of filling that back in reducing it to a 6' variance.

4. Mike Elson, 3510 Pela Verde Circle, in Pine Lake Homeowners Association, testified in opposition. His concern and opposition focuses on the use of 38th and Diablo as a major connection between the two developments.

5. Steven Prester, 3933 San Mateo Lane, at the corner of San Mateo and 40th Street, testified in opposition. 38th Street will make the situation nearly unbearable to get in and out of his home. Office park traffic would peak at about 8:00 to 9:00 a.m. and will be done by 4:00 or 5:00 or 6:00 in the evening, which would allow the neighborhood to enjoy the period of time during the lower traffic counts. The townhouses will have continuous traffic. It is difficult to see oncoming traffic from the south on S. 40th Street. Prester also expressed concern about speeding on South 40th Street and about the impact on property values with the townhome development. Is there precedence to build such a complex in this far south area of town? He would like to see the 38th Street connection removed if this is approved.

6. Amy Mitchell, 3724 Diablo Drive, mother of two small children, testified in opposition. There are a lot of small children in the neighborhood. In the 30 houses along Diablo Drive there are 30 houses and at least 30 small children. Her main concern is to preserve the safety of the children in the neighborhood and the children that will be brought into these townhomes. When traffic is coming north onto 38th Street to turn west, traffic is going to have to cross oncoming Diablo traffic to make a left hand turn onto 38th Street. The sharp turns that would be required create a potential problem with traffic flow. The students that would be in the townhome development will not go to Cavett. They will either have to be bused somewhere else or their parents will have to take them.

7. Trish Jarnagan, 7921 McBride Avenue, testified in opposition. She would be in favor of a smaller townhome development, but at the meeting with the developer, the neighbors were told that the cost of the land would make it necessary to build the 130 townhomes. Jarnagan recognizes the intentions of diversification in the area, but she believes this area has already been subjected to a large number of townhomes. She does not believe that 3, 4, and 5

dwelling buildings is in line with the vision for Lincoln's future. The neighbors have been told that if they dispute the townhomes, they will be looking at a 300-400 unit apartment complex in the future. The neighbors feel like they were threatened.

Staff questions

Bills-Strand asked staff to address the connection on 38th Street as opposed to 40th Street. Chad Blahak of Public Works advised that San Mateo is considered the half-mile point so it is a full intersection and would be considered for a traffic signal as the warrants dictate. Grainger and 40th is also another location that would be considered as the warrants dictate. The 38th Street connection was a stub to the south back when it was platted and the purpose for the connection is to provide inter-connectibility with residential neighborhoods. The connection at 40th at Fitzpatrick did not seem to provide that much benefit because anyone using it will be southbound and they are probably not going to be going north on 38th to get southbound. They will go down to Grainger. Limiting the number of access points makes it a safer roadway.

Esseks inquired whether there are any state or federal requirements that 38th Street be continued. Blahak explained that at the time it was platted, there was probably a block length issue that required it to be stubbed in.

Larson assumed that the stub was put in for connectivity assuming that this area would be the same sort of neighborhood that is along Diablo Drive. It was not stubbed in for anticipated development of 130 townhomes. Blahak did not know what was anticipated. If it was to come through as a package now, there would still be a potential block length issue between 40th and 36th or 37th, so there would still be a requirement for some kind of street to the south regardless of the density.

Bills-Strand suggested that they can go north on Grainger and there could be a traffic light at Grainger.

Esseks does not believe that townhouses typically produce that many school children. Ray Hill of Planning staff agreed that townhomes do produce less traffic than a straight single family home. Usually the smaller type units like this may include a lot of empty nesters. Marvin Krout, Director of Planning, stated that on average a single family townhome will have .3 public school students, and a smaller number of private school students. The proposed townhouses are three and four bedroom so there will be some young families in these units, but you could expect something less than .3. Thus, instead of getting 20 students in 60 homes, you might get 30-35 students coming out of townhouses.

Pearson inquired about the landscape plan. Hill acknowledged that the proposed landscape plan shows the buffer landscaping shown with the use permit. The individual landscape plans

do not come in until the final plat is submitted. The design standards that would be applied would be the office park landscape requirements, which are substantially higher than if this was zoned residential.

Carlson noted that the neighbors are driving on their internal neighborhood streets to access their neighborhood services on the edge. Aren't we trying to do exactly that, so they don't have to go to the arterials to get to the neighborhood services? Hill concurred. We like to have the connections within the neighborhood to spread the traffic out within the entire neighborhoods without having to go out onto the major street. If the 38th Street connection were deleted, all they are doing is moving the traffic down to Grainger and coming up 37th Street. The connectivity really helps to spread the traffic around.

Bills-Strand pointed out that the southeast corner of 27th and Yankee Hill is scheduled to be another major shopping center. Could there be apartment buildings on this land? Hill answered in the affirmative.

Response by the Applicant

Kalkowski submitted that the 40' setback around the edge of this development is significant when talking about residential uses. It is also a separation from the neighborhood. With respect to turning the buildings, the amendment to Condition #1.1.1 provides that 40' setback. It is not going to be a lot different looking at the side of a townhome versus turning the unit and looking at the whole back of the unit. She believes that planning has agreed to this change, leaving the buildings turned toward 38th Street.

Kalkowski does not believe that the patrons and people who work in office park are different than residents in the townhome units and they will figure out what route is the fastest. She does not believe Randy Hoskins said that office would provide less traffic. That is not true. An office park will generate significantly more traffic.

Kalkowski is also aware that a lot of the homeowners in Pine Lake Heights South cannot send their children to Cavett. There is a school site shown on the west side of 27th Street. LPS also owns a site directly to the south of Yankee Hill Road, so there will be alleviation of the crowding in the future.

Kalkowski also pointed out that parking will also be allowed on 37th and 38th Streets as well as the off-site parking being shown. The developer is providing a landscape screen and the required street trees on both sides of the streets.

Kalkowski submitted that with the 40' setback, there is significant green space within the development. The developer is not asking for the waiver of the lot size in order to increase the density. The waiver actually saves some of the green space.

Kalkowski assured that this development will meet the same covenants – this will not bring down the neighborhood. \$130,000+ will not constitute a project similar to the inner city. Instead, it will provide a range of housing choices for members of our community who want to live in south Lincoln, close to services and close to a school.

Carroll inquired as to the anticipated demographics. Kalkowski anticipates a mix of people. Two of the units are being built for the owner's sons. There will be some first time home buyers. They also expect to have some of the older couples who do not have children.

ACTION BY PLANNING COMMISSION:

June 22, 2005

Taylor moved to deny, seconded by Larson.

Taylor believes there has been very little communication between the developer and the existing property owners. There needs to be a development that is sensitive to the residential area that has already been in place. It might be a good idea for the developers to review the plan design and have communication with the neighbors to come up with a plan design that is going to be more acceptable.

Larson has experienced the difficult traffic problems at Cavett. The traffic situation is really bad at those times of the day when parents are picking up and dropping off kids. Furthermore, when there is a concert or another event at the school, Diablo almost becomes a public parking space. He is not concerned about the children from this proposal going to Cavett, but he is concerned about the residents going to their employment centers which are mostly north and west of where they live, and they would be going up Diablo over to 35th, etc. to go north, and that would occur many times at the same time as the school children going to school. The 38th Street connection is causing him to vote to deny.

Bills-Strand will vote against the motion because there is a real need for some affordable housing in south Lincoln. This proposal gives us some affordable housing and mixed use. There is not an elementary school in Lincoln that is not overcrowded. These kids will go to a different school. There is a parking problem at any school in town when there is a school event. There has been a change in demographics in townhomes. It is not just empty nesters buying townhomes. She believes there is a real need for this type of housing in south Lincoln.

Esseks agreed with Bills-Strand, but he is concerned about the lack of recreational space. It would be nice to have some playground area for the children. To him, the sacrifice of a couple of five-plexes would be more than justified by the improved recreational situation for the children.

Motion to deny failed 2-7: Larson and Taylor voting 'yes'; Sunderman, Carlson, Carroll, Krieser, Pearson, Esseks and Bills-Strand voting 'no'.

Carlson moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Esseks.

Esseks moved to amend to require double the size of recreation area, seconded by Pearson. Esseks believes there needs to be more open space as a resource for the community. Ray Hill advised that the design standards merely indicate that the recreational facility should be geared to the occupants of the community unit plan or the development. The Parks Department has asked for an additional play area or a half basketball court. One of the recreational facilities is shown at the northwest corner of the project at the end of Fitzpatrick. Then going down 38th Street there is a parking bay and another circle which represents the central mail box area and they are talking about putting some additional recreational facilities down in that location.

Motion to amend to double the size of the recreation space shown on the plan carried 5-4: Carlson, Larson, Carroll, Pearson and Esseks voting 'yes'; Sunderman, Krieser, Taylor and Bills-Strand voting 'no'.

Bills-Strand moved to add a traffic signal at 40th and San Mateo. Rick Peo of City Law Department advised that the Planning Commission cannot impose a duty on the city to install a traffic signal at any point in time. The location is required to meet traffic warrants and it is a City Council decision as to when and if traffic signals will be installed at an intersection. Bills-Strand withdrew the motion but urged that a traffic signal be installed.

Main motion for conditional approval, as amended, carried 9-0: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

WAIVER NO. 05006
TO WAIVE THE SIDEWALK REQUIREMENT
ON PROPERTY LOCATED AT
NORTH 64TH STREET AND COTNER BOULEVARD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

Proponents

1. **Steve Osenbaugh**, 3802 S. 57th Street, appeared on behalf of the applicant and owner of 1220 N. 54th Street, **Ken Bundy**. Mr. Bundy does not need the sidewalk because he is 63 and he has lived without the sidewalk all his life. Cost is not really the issue. With regard to handicap persons using their chairs to go down the street, Osenbaugh believes they will do that whether there is a sidewalk or not because it is a smoother ride. There have never been sidewalks at this location on Cotner and not having the sidewalk has not created any problems. He can think of only one house in the area that has children. It was because of Mr. Bundy that the development of this area was allowed. This was a blighted piece of property to begin with. There were motel/apartment units used by transient people and there were drug problems. Mr. Bundy allowed it to developed by selling the back half of his lot to Mr. Osenbaugh. The dental office would love to purchase Mr. Bundy's house, but he wants to stay there until he is not able to do so. If the sidewalks were constructed now, they would be ripped back out when Mr. Bundy's property is purchased by the dental office. They would put the sidewalks in at that time.

There was no testimony in opposition.

ACTION BY PLANNING COMMISSION:

June 22, 2005

Carlson moved to deny, seconded by Carroll.

Carlson commented that the sidewalk is a requirement of the preliminary plat. This is the last piece of sidewalk that has not been put in on the block. It has a fence across it now so that is why it is not used. Public Works indicates there is sufficient right-of-way to construct the sidewalk.

Motion to deny carried 8-1: Sunderman, Carlson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand voting 'yes'; Larson voting 'no'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 05009

WEST HOBELMAN ADDITION

ON PROPERTY GENERALLY LOCATED

AT S.W. 14TH STREET AND WEST "O" STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Conditional approval, including approval of the waiver requests, except to allow sanitary sewer depth greater than 15 feet.

Ex Parte Communications: None.

Proponents

1. Brandon Garrett of Engineering Design Consultants, appeared on behalf of **Lincoln North Creek, LLC**. West Hobelman Addition is approximately 9.79 acres and includes six commercial lots and two industrial lots serviced by private roadway. It is located at the proposed SW 14th Place and West O Street, just south of the West O Street Sun Mart. This plat helps realize the goal of infill development and enhances economical development opportunity by providing access and services to new tracts to small and medium employers.

The requested waivers recognize existing conditions and feasibility of future development. Garrett withdrew the request to waive the sanitary sewer depth. After meeting with staff, it was determined that the sewer can be designed such that the waiver is not necessary.

The waiver for on-site detention is recommended for conditional approval and the developer has obtained verbal agreement with the adjoining property owner to west that would allow for a conservation easement over their wetland area that would serve as stormwater detention for this addition. However, if the developer is unable to obtain this agreement, the detention would be provided on the site.

Garrett requested that Condition #1.1.1 and comments #6.3 and #6.4 of Condition #1.1.2 be eliminated due to the existence of natural and manmade features. These conditions require a paved public access easement to the adjoining parcels to the east and west.

Pearson inquired as to what natural features will prevent the development from providing the public access easements. Bob Lewis of Lincoln North Creek, LLC, referred to the subdivision ordinance provision that if there are topographical features that do not allow for continuance or projection of streets to adjacent properties, the city can exempt that condition. The property to the west is approximately 5 acres. The buildable area on that lot is about one acre along "O" Street. The rest of it is saline wetlands. The owner of that property is currently in the process of subdividing that lot into a nonbuildable outlot on the back 3.5 acres, with a single lot along "O" Street. Lewis does not believe a road connection within 200' of "O" Street is warranted. The property to the east is owned by Lincoln North Creek, LLC. They currently have a tenant on the site. Those are more manmade features and there is a depth issue and all of the lots today have access to "O" Street. There is no traffic coming from the south, nor do they expect that any traffic will ever exist. There is a building and parking lot with a tenant who has rented the property for five years with the notion that there will not be an access across his property.

There was no testimony in opposition.

Greg Czaplewski of Planning staff suggested that there is not a barrier significant enough to prohibit them from providing access to the properties to the east and west. An easement rather than a street would be acceptable and the staff is asking that they show that easement now. There are certainly no barriers to the east to provide access. There are wetlands on the south part to the west but there is a fair amount of developable land that would benefit from access to this property. They could show public access paved easements both to the east and to the west. The location can be changed when it comes to final platting of the property.

Pearson asked staff to comment about the verbal agreement for off-site detention. Chad Blahak of Public Works believes the agreement was that Public Works would approve the waiver of on-site detention if they could provide the written agreement from the property to the west prior to City Council approval. If they could not get that agreement, then Public Works does not support the waiver of detention. They are agreeable to provide on-site detention if they do not reach that agreement for off-site detention.

Pearson does not understand how someone builds in the 100 year floodplain. Blahak advised that the front portion of the lot is not in the floodplain. A flood map revision with FEMA is currently in process, so the property has already been filled through an approved fill permit. They are out of the floodplain now that they have filled the land.

Response by the Applicant

Lewis advised that the property was purchased three to four years ago and was filled many years before that. The FEMA map was never revised to show this property out of the 100 year floodplain.

As far as detention, there is a condition that if they cannot get a written agreement, they will show detention on the property. They are not asking for a waiver of detention.

Lewis strongly disagrees that there is no barrier to provide connections to the east and west. There is 200' of lot depth to the west that is usable. The property abuts "O" Street. For this developer to be burdened with showing some sort of access point into some sort of saline wetlands that is going to be a nonbuildable outlot does not make sense. It is not natural barriers to the east, but there is an existing structure with a parking lot, so he does not believe that that connection would be justified. If you look up and down West "O" Street today between Sun Valley Boulevard and the Hwy 77 overpass, there are 51 driveways that come out onto "O" Street on both the south and north side. This does not request something above and beyond what already exists today. At some point in time when there is a median put in West "O" Street, the burden will be on this developer. Lewis believes they do meet the criteria for the exemption.

ACTION BY PLANNING COMMISSION:

June 22, 2005

Carroll moved to approve the staff recommendation of conditional approval, seconded by Taylor.

Bills-Strand stated that she is opposed to requiring the easements. She moved to amend to eliminate the easements, seconded by Esseks.

Pearson commented that in the future they can develop the property to the west and the property to the east is already developed.

Motion to amend carried 8-1: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Esseks and Bills-Strand voting 'yes'; Pearson voting 'no'.

Main motion for conditional approval, as amended, carried 8-1: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Esseks and Bills-Strand voting 'yes'; Pearson voting 'no'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 05039
FROM B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT
TO H-3 HIGHWAY COMMERCIAL DISTRICT
and
PRELIMINARY PLAT NO. 05011,
CROSSBRIDGE 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT N. 27TH STREET & FLETCHER AVENUE.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Approval of the change of zone and conditional approval of the preliminary plat.

Ex Parte Communications: None.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant and requested that Condition #1.1.6, which requires a sidewalk along the south side of the private roadway that enters the site, be deleted. Unfortunately, this site is about 15 to 20 feet above the abutting property and there

is a retaining wall and a good share of the park runs in front of what is now Crossbridge church, which is already built. There is no space in which to build a sidewalk along the south side of the private roadway. The developer would propose to build sidewalks all the way along the N. 27th frontage and from 27th Street back in front of Lot 3 now owned by Campus Life, as well as in front of Lot 2, which is not currently occupied, and also all the way in front of the church.

Hunzeker submitted a motion to amend Condition #1.1.1:

Revise the preliminary plat to show:

1.1.1 Either:

- (a) No direct vehicular access to N. 27th Street from this plat, or
- (b) Show a temporary right turn lane extending 150 feet south of the plat and construction of a third northbound lane of paving N. 27th Street abutting the plat, AND prior to final plat, secure agreement from the property owner to the north to dedicate an additional ten feet of right-of-way for N. 27th Street and pave a third northbound lane on N. 27th Street from the north line of this plat to Fletcher.

The developer has met with Public Works to discuss access to this site. The shopping center to the south has a long downhill about 300' long and the only access currently to this site winds back up to literally abutting North 27th Street. It makes for a very inconvenient and unworkable access to the church and Campus Life. The developer would like either to relinquish access to North 27th Street, or to show a temporary right turn lane in North 27th Street, together with dedication of an additional 10 feet of right-of-way and construct an additional northbound lane in North 27th Street along the entire length of this plat, and secure the agreement of the abutting property owner to dedicate an additional 10' of right-of-way and construct an additional north-bound through lane. At that time, it is anticipated that agreement will also provide for a right-in, right-out. Public Works believes the additional through lane running all the way to Fletcher was sufficiently beneficial to the city as a whole to justify granting the access. Hunzeker anticipated that that will be agreed upon.

There was no testimony in opposition.

Greg Czaplewski of Planning staff believes that Public Works is in agreement with the amendment to Condition #1.1.1; however, the staff does not support the request to delete Condition #1.1.6 because Crossbridge is a private roadway. That sidewalk is a requirement of the design standards. If they want to waive that sidewalk, it will have to be advertised.

Chad Blahak of Public Works agreed with the proposed amendment to Condition #1.1.1 in light of the precedence of other driveways on N. 27th Street. However, it needs to be clear that part of the agreement was to dedicate right-of-way and construct the third lane on property that is north of this application. An agreement needs to be signed prior to City Council.

Response by the Applicant

Hunzeker believes that the applicant's letter of application requested to waive the sidewalks on both sides of the private roadway. The Clerk advised that the waiver was not advertised. Hunzeker went on to state that there is no way to put a sidewalk along the south side of that private roadway.

Carlson moved to delay two weeks, to allow advertisement of the sidewalk waiver. Upon further discussion, it was determined that the Planning Commission could proceed to act on the preliminary plat and that the sidewalk waiver could come forward separately.

Carlson withdrew the motion to delay.

CHANGE OF ZONE NO. 05039

ACTION BY PLANNING COMMISSION:

June 22, 2005

Carlson moved approval, seconded by Pearson and carried 9-0: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 05011

ACTION BY PLANNING COMMISSION:

June 22, 2005

Carlson moved to approve the staff recommendation of conditional approval, with amendment to Condition #1.1.1 as requested by the applicant, seconded by Pearson and carried 9-0: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council within 14 days.

CHANGE OF ZONE NO. 05042
FROM O-3 OFFICE PARK DISTRICT
TO B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT
and
USE PERMIT NO. 89C,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 14TH STREET AND PINE LAKE ROAD.
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

The Clerk announced that Kent Seacrest, on behalf of the applicant, has submitted a written request for four-week delay.

Carroll moved to delay, with continued public hearing and action scheduled for July 20, 2005, seconded by Carlson and carried 9-0: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand voting 'yes'.

There being no further business, the meeting was adjourned at 3:55 p.m.